gas in place that he can prevent even the owner of the land from committing waste by extraction of oil or gas. See also *Trees* v. *Eclipse Co.*, 47 W. Va. 107, 34 S. E. 933; *Williamson* v. *Jones*, 39 W. Va. 231, 25 L. R. A. 222.

MORTGAGES—"CLOG" ON REDEMPTION—COLLATERAL ADVANTAGES.—A covenant was inserted in a mortgage, not to use or sell in a certain house any malt liquors except such as should be purchased of the mortgagees whether any money should or should not be owing on the security of the mortgage. *Held*, upon payment of all due on the security, to be void as being a "clog" on the redemption and a reservation of a collateral advantage outside of the mortgage contract. *Noakes & Co.* v. *Rice* [1902], A. C. 24.

In England, since the repeal of the usury laws in 1854, there has been a variance in the application of the principles announced. 25 Ir. Law Times, 332; *Santley* v. *Wilde* [1899], 2 Ch. 474. In this country, the rules have been unreservedly approved. JONES, MORTGAGES, § 1044. Yet it has recently been held that besides principal and interest, a mortgagor must also pay a bonus agreed upon where usury is not specially pleaded. *Yankton B. & L. Asso'n* v. *Dowling* (1898), 10 S. D. 540. While the principal case expresses the equitable and logical views, it seems difficult for the courts in applying them to determine where the ordinary contract to secure ends and the "clog" or collateral advantage begins.

MUNICIPAL CORPORATIONS — TRAVELERS — STATUTE LIABILITY — PROXIMATE CAUSE.—Plaintiff, who entered a sewer for the purpose of rescuing her child, who had fallen through an open man-hole in the traveled portion of the street, contracted rheumatic fever as a consequence of the exposure and sued the city for damages caused by its negligence in leaving the cover off the man-hole. *Held:* That the city was not liable. *Kelley* v. *City of Boston*, (Mass.) 62 N. E. Rep. 259 [1902].

The city's liability arises only under the statute requiring it to keep streets reasonably safe for travelers. The plaintiff abandoned her position as a traveler when she voluntarily entered the basin and left the traveled portion of highway. *Harwood* v. *Oakham*, 152 Mass. 421, 25 N. E. 625. Her voluntary act in entering the catch-basin, and not the negligence of the city in leaving the cover off, was the proximate cause of the injury. Either view sustains the decision and is in accordance with the weight of authority,

MUNICIPAL CORPORATIONS—INJUNCTION TO RESTRAIN THE CARRYING OUT OF CONTRACT—COMPETITIVE BIDDING.—The charter of the City of Baltimore provided that in letting contracts for work and purchasing material of the value of five hundred dollars, the same should be done by advertising for bids and letting to the lowest responsible bidder. The city advertised for bids to collect, remove and dispose of garbage and dead animals, each bidder to submit his own plan of disposal of the garbage and dead animals with his bid. Contract let to defendant, and plaintiff, a tax-payer, files a bill to enjoin the carrying out of the contract. *Held:* That the city should be enjoined from carrying out the contract, on the ground that there was no actual competition as required by the charter. *Packard* v. *Hayes*, (Md.) 51 Atl. Rep. 32,.

The holding of the principal case is the general rule, See *Mazet* v. *Pittsburg*, 137 Pa. 548, where it was held that in advertising for street paving bids, the city must give specifications as to kind of pavement, Also *Hardware Co.* v. *Erb*, 54 Ark. 645, where it was held that the Board could not advertise for both plan and bid, and accept a plan and its accompanying bid. The case is interesting as showing the construction by the court of the phrase "lowest bidder," it being held to require actual competition for the purpose of preventing favoritism and fraud, and that this can be done only by the city adopting plans and specifications and having all bidders compete on the same footing.

MUNICIPAL CORPORATIONS—NEGLIGENCE—LIABILITY FOR ACTS OF OFFICERS,—One Cope was employed by the Health Board of the city of Detroit to tear down an old pest house located on grounds owned by the city. He contracted small pox and died. His wife, as administratrix, sued the city for negligently causing the death of her husband, and alleged that Cope was not notified of danger and that the city did not properly disinfect. *Held:* That even if this were so, the city was not liable for negligent acts of the officers of the Board of Health. *Nicholson* v. *City of Detroit*, (Mich.) 88 N. W. Rep. 695 [1902].

The city is liable for negligent plumbing and draining of a school building, whereby adjacent property is flooded. *Briegel* v. *Philadelphia*, 135 Pa. 451. Ownership of the land seems to be the deciding point in this case, which cannot be said to be well supported by authorities. Municipal corporations are liable for the improper management and use of their property to the same extent and in the same manner as private corporations and natural persons. 2

DILL. MUN. COR., [3rd Ed.] § 985. This language is very broad, but the cases cited seem as a rule to recognize the principle that the use to which the property is put is important. The true test seems to be as stated in the principal case, whether the act is one in which the city has a private interest instead of a public duty.

Local health officers, acting under general statute, are representatives of the state. 2 DILL. MUN. COR, [4th Ed.] § 974. In the principal case the Board of Health is created by statute and though its members are chosen by the city it still represents and acts for the state and the city is not liable for its acts. This is the general rule and governs the principal case, and plaintiff's only remedy, if she has one, is against the officers personally.

PLEADING—SPLITTING CAUSE OF ACTION—INJURY TO PERSON AND PROPERTY.—A plaintiff who had recovered for injury to his person caused by the negligent act of defendant, sued for injury to his property caused by the same act. *Held*, that the former judgment was a bar, both injuries being items of damages of the same cause of action. *King* v. *Chicago, etc., Ry. Co*, [1900], 80 Minn. 83, 81 Am. St. Rep. 238.

This doctrine is not accepted in England or in some of the states. *Brunsden* v. *Humphrey* [1884], 14 Q. B. Div, 141; *Watson* v. *Texas, etc., Ry. Co.* [1894], 8 Tex. Civ. App. 144, But it appears as established in the United States in decisions prior to the English case, *supra*. *B. & O. R. R. Co.* v. *Ritchie* [1869], 31 Md. 191; *Cincinnati, etc. R. R. Co.* v. *Chester* [1877], 57 Ind. 297. And is sustained by the weight of authority. *Bliss* v. *N. Y. Central R. R. Co.*, [1894] 160 Mass. 447; *Reilly* v. *Sicilian Paving Co.* [N. Y. 1897] 14 App. Div. Rep. 242. While perhaps strictly not the more logical rule, *Darley, etc., Co.* v. *Mitchell* [1886], 11 App. Cas. 127; it is the more practical and expeditious, *Howe* v. *Peckham* [N. Y. 1851] 10 Barb, 656.

PUBLIC LANDS—WHEN VACANT—OCCUPANCY BY EXPLORER FOR MINERALS.—Public land, selected in lieu of relinquished forest reserve lands, under act of June 4, 1897, was at the time of application for approval of the selection in actual occupancy by others engaged in exploring for oil under a previous unperfected location, no oil having yet been discovered; but before the approval by the land department, the explorers found oil. *Held*, that while such land is occupied by persons making such exploration it is not "vacant and open to settlement," and so subject to selection under said act, though the location of the explorers does not appear by the records of the land office, and no oil is discovered; and a selection under said act, until approval, gives no legal or equitable title to the land selected, and leaves it subject to exploration for minerals. *Cosmos Exploration Co.* v. *Gray Eagle Oil Co.*, 112 Fed-4 (C. C. A.)

No valid location of a mining claim can be made until discovery of mineral. R. S. of U. S. § 2320; and the right of possession comes only from a valid location. *Belk* v. *Meager*, 104 U. S. 279. Mere occupancy of lands of any class and improvements thereon give no vested rights as against the U. S., or one connecting himself with the government by compliance with the law, *Sparks* v. *Pierce*, 115 U. S. 408; LINDLEY ON MINES, § 216, But possession is good as against a mere intruder, being *prima facie* evidence of title. *People* v. *Shear*, 73 Cal. 541; LINDLEY ON MINES. § 218. The principal case holds the applicant under the reserve act to be a mere intruder. as the land in question was excepted by occupancy from locations and rights on the public domain cannot be initiated by forcible entry even against mere possession: *Atherton* v. *Fowler*, 96 U. S. 513. 25 Pac. Rep. 793, seems to decide that the occupant in search for minerals may not only protect himself in his *pedis possessio*, but may hold the entire claim by location without discovery, excluding other prospectors. But MORRISON, MINING RIGHTS (1900), 289, says such holding is against the weight of authority. The principal case apparently holds that occupancy excludes not only other prospectors, but any settler or appropriator of public lands. Such holdings, as said in the dissenting opinion, may lead to undesirable results.

PUBLIC OFFICERS—JUDICIAL—LIABILITY OF JUDGE.—A judge of a court of common pleas took into his possession the record and files of a cause in order to prevent a party to such cause from securing a copy of a Master's report and of the evidence. *Held*, that this was a judicial act for which the officer was not liable civilly, irrespective of motive. *English* v. *Ralston* (Cir. Ct. E. D. Pa.) 112 Fed. Rep. 272.

Cases with similar facts seem very rare, and the report of this case is not as full as would have been desirable. The prothonotary of such court is the proper custodian of the records, and it is his power and duty to issue exemplifications of all records and process therein, B, P. Digest, Vol. II., p. 1379, §§ 71 & 72; p. 1272, § 41. Such copies may be absolutely essential to one's case, (*Detra* v. *Hoffman*, 5 Del. (Pa.) 321), and the allowance of inspection and copies may be enforced by mandamus; As to evidence, *Daly* v. *Dimock*, 55 Conn. 579; books of court